

Suffragists and Antis Favor Jury Service for Women

But the Antis Want to Make Their Sisters Weary of the Duties of Citizenship

By Hannah Mitchell

"A BODY of men, usually twelve, selected according to law, impaneled and sworn to inquire into and try any matter of fact and to render their true verdict according to the evidence legally adduced." That is a dictionary "jury." Juries and jury duties were not much in the public eye until suffrage was given to women. "The service due the state involved in a jury summons was taken for granted, and the men who were called found excuses if they could and served when there wasn't any way out.

With the advent of a new group of voters, the women who had worked for suffrage said that they thought women should serve on juries, just as men did. The women who were against suffrage said that women should be compelled to serve on juries, just to show them what they had let themselves in for in getting the vote. And the men—well, the men have been almost conspicuously silent in the matter.

Judges Dodge the Question

Judges and lawyers hesitate to express opinions as to whether women should or should not serve. Judge Otto A. Rosalsky, of the Court of Special Sessions, announced in the fall that he believed that now women had voting privileges they should assume certain duties and serve on juries. He gave this as his opinion one morning when an unusually large number of women came to the court to have their husbands excused from jury duty.

Most women connected with the courts and the leaders in various women's organizations agree with him. What the rank and file—women in business, housekeepers, wives and mothers—feel in the matter will be shown best in the way in which they respond when impaneled.

Alfred P. Talley, chief Assistant District Attorney of New York County, is not enthusiastic, however, over the prospect of women on the juries. He is frank in his opinion, where many attorneys have been silent.

"One must distinguish between what is right and what is a duty," said Mr. Talley last week.

"The fallacy of the reasoning of those who advocate the service of women on juries consists in this—that they regard and insist that jury service is a right of a citizen, which right is coincident with and inseparable from citizenship.

"Because of usage we overlook the significance of a common expression. How often we hear a man inform his neighbor that he cannot make a business engagement because he is doing jury duty. It is undoubtedly a duty, and is always so regarded, just as, for example, is another duty—citizenship—the duty of bearing arms in defense of the government.

"It is a frequent custom upon the part of judges to thank juries at the completion of their terms of service. No one ever heard a jury complimented upon having had the privilege of neglecting their business affairs and domestic or social obligations. They are invariably discharged, with the thanks of the court for the manner in which they have performed the duty imposed upon them by the law.

"Not all men are called upon to do jury duty. The doctor, the lawyer, the engineer, the editor, the priest and many others are exempt from service.

Would Exempt Women

"It is my belief that women—all women—should be free from jury service, as an exemption from a duty which the law imposes upon less favored citizens."

Mr. Talley went on to say that he believed that the large number of women were mothers and homemakers. The bearing of children and the guardianship of the home should exempt women, he feels.

"Public policy requires that certain laws be made for the protection of women for no other reason

than that they are women. The laws prevailing throughout the land regulating the hours and methods of the employment of women are instances which readily occur to mind. Some women say to the law, 'You shall not provide that I may not work as long or as late as a man. By so doing you are interfering with my rights as a citizen—with my right of contract, with my right as an adult citizen and voter to sell

right to sit on juries. The premise is faulty as soon as we admit that jury service is not a right or a privilege, but a duty.

"It likewise cannot safely be argued that a woman's right under the Constitution to a trial by her 'peers' is interfered with unless women are called upon the jury. If there is any force to the suggestion that a woman citizen is entitled to a trial by her peers and that her peers means other women, it could likewise be argued that all the other existing limitations affecting jury duty in this state should be abolished as offering unjust discrimination.

The judiciary law now provides

should not a man over seventy, who could not read or write, or who did not have \$250 to his name, be accorded the right to declare that a jury possessing the things that he lacked were not his peers?

"There is no room for doubt that some women would make better jurors than some men. But that observation is not necessarily complimentary to women, nor does it qualify them for service.

"Back of the whole question of women jurors, women voters, women legislators and women generally in public life looms forth one great and indisputable fact, and that is, that woman approaches the problems of life with her heart and not with her head."

From the District Attorney's office in Brooklyn comes an opinion in the matter which is reasonable toward both sides of the question. Miss Helen McCormick, who has been for several years Assistant Deputy District Attorney in Queens County, says that she believes that women should be permitted to serve on juries.

"But," she adds, "they should be exempted at any time simply on sex. I believe this because the woman and the home are so closely related that a broad exemption should be open to all women.

"Now that women in New York

are temperamentally not fit to serve on juries have little consistency. They are fitted for other offices in the courtroom. And because of temperament they are not exempted from punishment for offenses against the state.

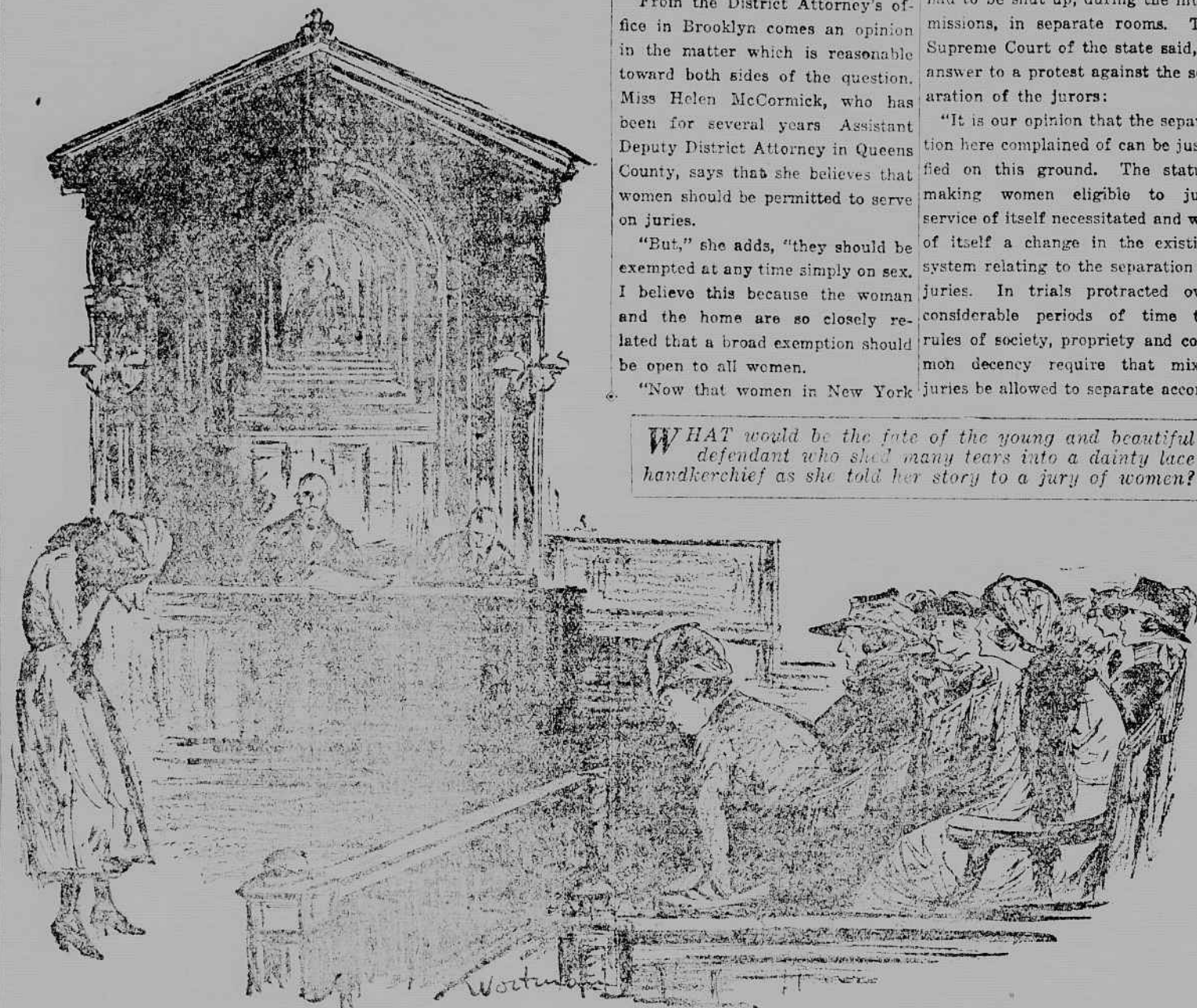
Value of Intuition

"Women have intuition, and the value and accuracy of that sense is recognized. It may be a good thing in some cases and on some juries."

Miss McCormick discussed the case in Washington where there were eleven men and one woman on the jury. The case lasted for several days, and, according to the Washington law, the woman and men had to be shut up, during the intermissions, in separate rooms. The Supreme Court of the state said, in answer to a protest against the separation of the jurors:

"It is our opinion that the separation here complained of can be justified on this ground. The statute making women eligible to jury service of itself necessitated and was of itself a change in the existing system relating to the separation of juries. In trials protracted over considerable periods of time the rules of society, propriety and common decency require that mixed juries be allowed to separate accord-

WHAT would be the fate of the young and beautiful defendant who shed many tears into a dainty lace handkerchief as she told her story to a jury of women?



my services when and how and where I please."

"But the highest court in our land says to the woman: 'The future of the race is of more importance than your right of contract, the maintenance of healthy women and the need for healthy offspring is paramount to your earning capacity and ambition. You are a woman and the law will protect you even against yourself for the general weal—for the welfare of the republic.'

"It is a fallacy to argue that the right to vote carries with it the

that a male citizen must have something else besides the right to vote to qualify for jury duty. He must be a resident of the county, not less than twenty-one nor more than seventy. He must own property of the value of \$250, or his wife must. He must not be infirm and must be intelligent, of good character and be able to read and write the English language understandingly.

"If it be argued that a woman should have the right to a trial by a jury upon which women may be drawn," continued Mr. Talley, "why

have suffrage, it is right that they should assume responsibilities toward the state. Where it is possible for them to do so, they should serve on juries.

Favors Broad Exemption

"If a broad exemption is provided in the law permitting such service, there is little danger of women trying to take advantage of it. Duty is of such moment to all women that where it is involved they will be conscientious.

"Arguments such as that women

ing to sexes at stated intervals during its progress.

"It may be questioned, moreover, whether the courts have not placed a too narrow construction on the word 'separate' as used in the statutes. The object and purpose of keeping them sequestered is and always has been to keep them from being influenced with reference to the matters given them in charge by ulterior practices. This purpose is as well accomplished when the jury are kept singly under the charge of sworn officers of the court as it is



THESE three agree women should serve on juries. They are, left to right, Miss Rose Young, editor of "The Woman Citizen," and Miss Helen McCormick and Miss Rose Rothenberg, Deputy District Attorneys

when they are kept under like of ficers in a body."

New York Law Proposed

A bill was introduced in the Senate of the New York Legislature last year by Senator Twomey amending the judiciary law in relation to the qualification of jurors. A similar bill is before the present session of the Legislature.

A new exemption was named in the bill. This made a woman exempt, if she wanted to be, because she is a woman. Otherwise the amendment simply took out the word "male" in its definition of jurors and added the pronouns "she" and "her" where "he" and "him" were used in the law.

Rose Rothenberg, Assistant Deputy District Attorney in connection with District Attorney Swann's office, has gone on record as favoring jury service for women.

"Women's service on juries is just a continuance of their responsibility assumed in voting," she said. "I believe that women should be drawn for juries just as men are. Their qualifications should be just the same. The attorneys are interested in jurors for what they think their sympathies are. In cases where women are on trial it would be only fair to have women on the jury."

Suffragists and anti-suffragists are agreed on one thing at last. They arrive at their opinions from opposite points of the compass, but they both say that women should serve on juries. That is about as far as they go together. Their reasons for standing for jury service and their beliefs as to the outcome of such service are as far apart as their opinions on voting.

Miss Mary Kilbreth, speaking for

the New York Anti-Suffrage party, says:

"One of the quickest ways of repealing a bad law is to enforce it. If all the duties pertaining to suffrage are required of women we shall see how long the suffrage law will last.

"Military duty and jury duty are two of the duties of a voter. To think of women in military service is absurd. If a mandatory jury service law is passed we shall see how long women will consider voting a privilege to be desired.

"A law stipulating the exemptions that would have to be made for women would be a statutory joke.

"But having entered this experiment of woman suffrage, I believe it should be carried out to its logical conclusion. It should be honestly and thoroughly tried."

Sees Benefits in It

In an honest trial of women in jury service Miss Rose Young, of the National American Woman Suffrage Association, believes many benefits may be gained to the courts and to the state.

"Women have a distinct contribution to be made to the courts," Miss Young says. "Women have an instinct for balance between motive and deed. They have feeling for the value of humanity. Their maternal instinct extends to the betterment of the race. If they were trying a boy who had stolen bread because he was hungry they would consider the effect that punishment would have upon his future.

"That doesn't mean that women are sentimentally merciful. But where youth is on trial the quality of mercy is not out of place, and women would consider everything involved, not just the technical facts."

"The Woman Citizen," of which Miss Young is editor, made a survey of women's status on jury duty in suffrage states. As a result it found that there are six equal suffrage states in which women are permitted to serve on juries. These are

Kansas, Nevada, Utah, Washington, California and Idaho.

"In Kansas," says the Attorney General, "women are exempt if they plead sex. However, they may serve if they desire to and qualify." So willing have the women been to serve that they helped defeat a bill designed expressly to exempt them.

Such a bill as was defeated in Kansas has actually become law in Utah. The District Attorney writes:

"There is nothing in the Constitution or laws of this state which would prevent a woman from acting as a juror, provided she is a citizen of the United States, over the age of twenty-one years, can read and write the English language, has the required statutory residence, is a taxpayer in the state, and is of reputable, sound mind and discretion, and not disabled in body so as to be unable to serve as such. However, by a statute a female citizen is expressly exempt from jury duty."

One Has Served

Since this letter was written, however, a woman juror did actually serve in Utah in spite of the exempting statute.

"Women are not excluded from jury duty," writes the Attorney General of Idaho, "either by constitutional provision or by statute, nor can they be exempt if they plead sex, and they may be forced to serve upon exactly the same terms as men. As to the proportion of women who serve on juries, I will say that very rarely indeed do women serve. In practice, if summoned as jurors, it is more than likely that the judge would accept an excuse and relieve them from duty."

As for the equal suffrage states where women do not serve, the Attorney General states:

Montana: "Women are not qualified as jurors in any case."

Colorado: "Only men are eligible for service on juries."

Arizona: "Our law does not provide for women serving on juries."

Alaska Territory: "Women are excluded by the terms of the jury law."

In Illinois, Wyoming and Oregon they did actually at one time serve on juries, only to be deprived of the duty later. In Wyoming they served even before they had the vote.

In Illinois women served in the early days of woman suffrage, then the Attorney General withdrew this right on the ground that "without express legislation they are not qualified."

Reason for Exemption

In Washington and California women jurors served, were deprived, and the right was restored to them by legal enactment. In Washington in 1911 and in California in 1917.

The ground on which in these eight states women have not been allowed to serve on juries was laid down in the Harland case, which deprived Washington women of their right to serve as citizens, and necessitated special legislation on this matter. The common law term by which a juror is described in the law is *homo*—human being—and under this word *homo*, as used in the jury law, says Blackstone—that wealth of information on the legal suppression of women—"though a word common to both sexes, the female is, however, excluded *propter defectum sexus*."

This "defect of sex," first recognized in the Harland case, has been removed by law in Washington and in California. Such a law has been pushed but not yet passed in some of the other states where women are not allowed to serve. But the common law principle underlying the Harland case may at any time be adopted by Attorney Generals in these states and the right of jury duty be withdrawn.

FROM BEYOND THE GRAVE—By Jean Bertheroy

Translated by William L. McPherson

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Here is a vivid and appealing little war story by Jean Bertheroy (Mme. Le Barillier). It appeared last November in "Le Petit Journal" of Paris.

O Grave, where is thy victory?
O Death, where is thy sting?

IT WAS the fourth year that Madeleine had gone to lay flowers on Julien's grave the evening before the anniversary of his death. She looked forward to that memorial date, as during his life she had looked forward to his birthday. She reached the cemetery toward evening, her arms laden with flowers and a gentle smile of sadness on her face.

She gave herself up to her memories. The anemones, with their hue of pale gold, were the flowers which he loved best. When they were together they always chose anemones to decorate their apartment and arranged them in vases so as to heighten the feeling of their beauty and the grace which they added to the joy of love.

Then Julien had been called to the front. His youth had been cut down like the waving grain before the scythe of the reaper. No adieu, no supreme outcry, had marked for them that heartrending moment. She saw him again exactly as he was in life, all gay, all happy; and she still loved him as ardently as when he was with her.

That evening she felt his presence nearer to her than ever. Love is the equivalent of faith, and one believes in God when he believes in the sublimity of love. That belief

had taken root in the depths of her consciousness, without her having blended with it any adulteration of mysticism. She knew that Julien was not really dead because she kept on loving him.

It was getting late. She put her flowers in place and started away. She walked with the slow step and august carriage of a woman who has just received the Host and feels herself sustained and revived. She had communed with her dead. She was going home—to the empty house in which the absent one's place was always kept waiting for him.

The streets were agreeably animated. Since it was fine weather, although autumn had begun, the promenaders were walking slowly and enjoying the voluptuous stillness of the evening air. Women with furs uncovered their necks. Delicate perfumes were scattered as they passed along.

Suddenly Madeleine gave a start. She had just recognized in one of the strollers Georgette, a friend of her childhood, whom she hadn't seen for many years. The two young women, after marrying, had lived for themselves, forsaking friendship for love. Some command of destiny must have brought them together that evening, face to face.

They looked at each other, each curious to find in the other's eyes some gleam of the old friendly feeling. Georgette was the first to speak:

"You haven't changed at all! You are still the same! And black is becoming to you, in spite of the effect of sadness which it gives."

She added, hesitatingly: "Have you lost some one? Your husband, perhaps, like so many others? I am sorry for you—from the bottom of my heart."

"Yes," said Madeleine. "I should have let you know when I went into mourning. But I didn't write to anybody. Besides, I didn't know your address."

They walked side by side in silence. They had so many things to tell each other that the words wouldn't come. Presently Georgette stopped before a smart-looking house.

"I live here. Won't you come in for a few minutes?"

"With pleasure."

They mounted the stairs to the first floor. Georgette rang and a servant opened the door. They entered a sumptuous salon, and the servant turned on the electric lights. Then Madeleine was startled to see that her friend's features had hardened and that her hair, after she had

taken off her toque, seemed dry and lifeless. The elegance of her toilette accentuated the suggestion of premature old age. Did Georgette divine her companion's thought? She began to explain, a little nervously:

"You see, I have never ceased to care for display, for luxury, for all that captivates the eye. I keep myself occupied with the surface of things. In that way I don't notice the shadows of the joys which I have lost."

Her voice developed an almost tragic note. Madeleine questioned her.

"What has happened to change your life?"

"Nothing! Absolutely nothing! At least so far as appearances go. My husband came back from the war safe and sound, with two crosses on his breast. His record was glorious. Everybody but me. Alas! It was a dead man who returned to me. His heart is dead; his capacity for feeling is atrophied. He no longer loves me, and I often ask myself whether he ever loved me."

"His love will reawaken, Georgette."

"No! One cannot revive the past. What is ended is ended. I am a

widow, absolutely a widow—more than you are, perhaps, with your widow's weeds."

She looked at the pure countenance opposite her, whose smile had never been effaced.

"It is curious that with the great sorrow you have suffered you have kept your air of serenity and youth. You are as young as when we used to amuse ourselves by indulging in dreams of the future. Don't you remember? All those dreams have been shattered. One never leads the life he has looked forward to."

She had picked up a bunch of carnations, and was cruelly plucking the flowers, petal by petal. One might have said that she was revenging herself on those fragile flowers for the ruin of her happiness. At that minute the door opened and a man, wearing a decoration, entered. He had a handsome face, still showing signs of the strain of his years at the front; a straightforward look and a note of ease and simplicity in his manner of greeting his wife's guest.

"My friend, Madeleine Sichard, of whom I have often spoken to you," Georgette said, by way of introduction. "We met in the street as she was coming back from the cemetery, her own throbbing heart.

and I asked her to come in and see me."

He bowed, and then looked at her interestedly.

"Sichard! I remember that name. Sichard? Wasn't he a lieutenant in the — regiment of infantry?"

"Yes, and when he fell he had just won his third stripe."

"We were together at the beginning of the war. We even fought side by side. Ah! That brave and noble heart! Is it possible that death took him, too? Excuse me, madame. I can't help being affected."

Tears ran slowly from his brown eyes, and with that masculine modesty which feels shame at a sudden burst of feeling, he drew aside a few steps.

Madeleine had taken Georgette's hand.

"Go and kiss him!" she murmured. She felt that the soul of the dead man was there, enjoining on them that step toward reunion; that he was there himself, invisible but living, and so rich in love that it was easy for him to give some of it to those who no longer possessed it.

The embrace was prolonged. Madeleine picked up the carnation petals, which were strewn on the carpet like drops of blood. Her hands full of these trophies, she tranquilly descended the stairs. She wanted to wreath them into a crown of laurel leaves and to carry it at dawn the next day to the gravestone on which she was going to deposit her own throbbing heart.